

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

D.H., a minor, by her next friends A.H., mother, and  
E.H., father,

Plaintiff,

v.

WILLIAMSON COUNTY BOARD OF  
EDUCATION; JASON GOLDEN, in his official  
capacity as Director of the Williamson County  
Schools; THE TENNESSEE DEPARTMENT OF  
EDUCATION; and PENNY SCHWINN, in her  
official capacity as Commissioner of the Tennessee  
Department of Education,

Defendants.

Case No. 22-cv-00570

**DECLARATION OF A.H. IN SUPPORT OF PLAINTIFF'S MOTION  
FOR A PRELIMINARY INJUNCTION**

I, A.H., pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the mother of D.H., the Plaintiff in the above-captioned case. I submit this declaration in support of Plaintiff's Motion for a Preliminary Injunction. I make the statements herein of my own personal knowledge and if called upon to testify thereto I could and would so truthfully.

**A. Background About My Family**

2. I met my husband E.H. in 2006 in Charleston, South Carolina. Shortly thereafter, E.H. moved to Nashville, Tennessee and I joined him in 2007. We married that same year.

3. Our family made Williamson County, Tennessee our home in 2011 and we have been active members of our community since.

4. We are parents to one son and one daughter. Our son is the oldest child, and he is 12 years old. Our daughter, D.H., is 8 years old and the Plaintiff in this action.

5. Both of my pregnancies were complicated by preterm labor and extended complete bed rest. My husband and I call D.H. our “Rainbow Baby” because I suffered a miscarriage before D.H. was born.

6. During my pregnancy with D.H., I went into preterm labor at eighteen weeks and was forced to take complete bed rest. This means that for most of my bed rest, D.H. was not a viable gestation and I begged God to let me keep my baby. I promised I’d do anything required to protect her.

7. The birth of D.H. went smoothly and I was able to hold her in my arms in the operating room.

**B. Our Daughter, D.H., Came Out as Gender Non-Conforming/Transgender in June 2020, When She Was Six Years Old**

8. Our daughter D.H. was born in Nashville and assigned male sex at birth.

9. D.H. is currently 8 years old and an incoming third grader at an elementary school (the “Elementary School”) in Williamson County, Tennessee.

10. An anonymized picture of D.H. is below:



11. D.H. has always exhibited a strong sense of identity. Like most families, we used to affectionately refer to her by terms of endearment like “cutie pie,” “love bug,” “boo,” and “lovie.” However, at age three, D.H. explained that she didn’t like to be called by these names and insisted that she be called by her given name only.

12. At age four, D.H. confided in me that she did not have any clothes that made her “feel pretty.” In response, I took D.H. shopping and told her to pick out any outfits she wanted. D.H. chose four tank tops from both the girls’ and the boys’ sections, including her favorite tank top, which was a hot pink tank top featuring a balloon animal unicorn with a gold glitter horn.

13. Between ages four and five, D.H. began exhibiting concerning behaviors at community events at a church she attended for Mother’s Day Out. Although she was well-liked and would play with all the children, D.H. would reflux uncontrollably. The condition was unrelated to any of her eating habits. D.H. underwent a procedure to scope her esophagus to determine the cause of her reflux and was diagnosed with regurgitation, a psycho-social problem rather than a medical one. We learned from her doctor that D.H. was unintentionally making herself vomit to ease her anxiety and, at the time, our family did not know why.

14. Just before D.H. started kindergarten, she began to worry extensively about her classmates' perception of her gender because she enjoyed wearing her hair long and would sometimes paint her nails. Before her first day of kindergarten, she insisted on cutting her hair to a short, traditional cut so she could meet her classmates' expectations. I remember vividly her crestfallen face when seeing herself in the mirror. She was devastated by the choice as soon as it happened.

15. At age six, D.H. told me "I think I'm supposed to be a girl. It's just that I feel closer to what it means to be a girl in my heart than a boy." I told D.H. that she was not alone and that many people feel the same way. I explained to D.H. that some people even prefer to be called "she/her" instead of "he/him," and D.H. said that she'd like to try being called "she/her."

16. After my talk with D.H., our family and extended family began referring to D.H. as our daughter and using "she/her" pronouns.

17. E.H. and I also joined PFLAG, the first and largest organization dedicated to supporting, educating, and advocating for LGBTQ+ people and their families, to support D.H. in affirming her gender identity.

18. Currently, D.H. is experiencing adjustment disorder. It is a disorder created by the development of emotional or behavioral symptoms in response to identifiable stressors originating within three months of onset. D.H.'s psychologist has linked her adjustment disorder to D.H.'s inability to live her life fully as a girl in all respects, which has been aggravated in particular by her inability to use the girls' restroom at school. D.H.'s adjustment disorder materializes in alarming symptoms, including the regurgitation discussed above as well as migraines and nightmares. My family's concern for D.H.'s wellbeing increasingly grows each day as she is repeatedly denied the opportunity to live her life in harmony with her gender identity.

**C. D.H.'s Experiences as a Transgender Girl at School**

19. D.H. began her social transition in the spring of 2020 during the COVID-19 pandemic after kindergarten.

20. For the fall of first grade at the Elementary School, which was conducted in person, D.H. decided she was ready for non-family members and those at her school to begin referring to her with “she/her” pronouns. At this time, she also wore a mix of girls’ and boys’ clothes and continued to grow her hair.

21. I met with the principal of the Elementary School via Zoom to explain D.H.’s desires. Over the course of a month, my husband and I met with the school administrators, counselors, D.H.’s first grade teacher, all special area teachers, and our son’s teachers. I prepared and presented a slideshow aimed at: (1) providing background on D.H.; (2) explaining what it means to be transgender and what it is not; and (3) recommending what the Elementary School could do to support D.H.

22. The Elementary School’s administration wanted D.H. to reveal herself “organically” to other students. They wanted the kids to figure D.H.’s gender identity out by hearing teachers use her pronouns and for D.H. to explain it one-on-one to her classmates. E.H. and I voiced serious concerns about this approach—we did not believe this suggested approach was supportive of D.H.’s social transition. For example, D.H. tried to follow the suggestion of revealing herself “organically” but on two separate occasions of doing so to certain boys in her class, the boys became argumentative and hostile with her and D.H. eventually stopped trying. Although the school administration was notified of these incidents, they were slow to respond in addressing them and did not change their view that D.H. should “organically” reveal herself to her classmates. Her teachers also often continued to misgender her—*i.e.*, refer to D.H. with “he/him” pronouns.

23. With little help from D.H.'s teachers, I attempted to reason with the mothers of D.H.'s classmates and they too did not respond well, often stating that D.H. "was just confused." Some said they would not make their child use "she/her" pronouns or discuss gender identity with their children because they believed their kids lacked the capacity for understanding such subjects.

24. D.H. told E.H. and me that she was thankful that she had to wear a mask at school, because she could hide her face. D.H. also learned how to cry out of one eye so that her classmates would not notice that she was upset.

25. Concerned about D.H.'s wellbeing—as the Elementary School adopted a no-mask policy and neither of our children were vaccinated against COVID-19—my husband and I decided to enroll D.H. in an online-only school at the start of her second-grade school year in the fall of 2021.

26. At the start of D.H.'s second-grade year at the online school, she was introduced to her classmates with "she/her" pronouns and the school prepared a 504 Plan for her, which is a formal plan that schools develop to give students the support they need to succeed at their school. Although the school was not in person, D.H.'s 504 Plan included all the accommodations that D.H. would need, including the ability to use the restrooms of her choice (*i.e.*, the girls' restroom) any time D.H. was in-person, like during field trips or in-person testing. When D.H. attended classes virtually on camera, all of her classmates could also see that she presented as female. At this time, she began living socially as a girl, for example wearing exclusively girls' clothing. Most of D.H.'s classmates were welcoming; only one ever made a hurtful comment about D.H.'s name not being a "girl's" name.

27. Although D.H.'s online school affirmed D.H.'s gender identity and made her feel welcome, at the end of the first half of second grade, D.H. expressed a desire to return to the

Elementary School. D.H. missed her friends, and she also missed the collaboration and other benefits of being able to attend school in-person and be around other people her own age. By that time, D.H. had been vaccinated against COVID-19 and the Elementary School adopted a mask policy, so E.H. and I felt more comfortable sending our daughter back to the Elementary School.

28. Before re-enrolling D.H. in the Elementary School, E.H. and I met with the Elementary School's superintendent, principal, and D.H.'s psychologist via Zoom to ensure that the Elementary School would protect D.H. from bullying and harassment and affirm D.H.'s gender identity, by using "she/her" pronouns and allowing her to use the girls' restroom.

29. The Elementary School gave E.H. and I assurances that they would support D.H., reprimand students who bullied her, and hold accountable students who repeated the offense.

**D. D.H. Attended the Elementary School Under the School Facilities Law During Second Grade**

30. Relying on the assurances E.H. and I received from the Elementary School, E.H. and I re-enrolled D.H. in-person in the Elementary School beginning January 2022 for the second half of her second-grade year.

31. At this time, the Tennessee Accommodations for All Children Act ("School Facilities Law") was in effect.

32. Although the Elementary School took into account the 504 Plan that had been put in place at the online school D.H. attended for the first part of second grade, they made significant changes to the Plan. In particular, the Elementary School administration informed E.H. and I the day before the second half of school started, that they would not be able to allow D.H. to use the girls' restroom (as was her choice) because the girls' restroom did not correspond with the sex D.H. was assigned at birth.

33. The Elementary School officials insisted that D.H. use the single-occupancy restroom facilities at the Elementary School instead of the multi-occupancy restroom facilities that the rest of her classmates used.

34. The multi-occupancy restrooms that D.H.'s classmates used are U-shaped restrooms where the girls' and boys' facilities are separated but share a common handwashing trough.

35. Since D.H. was not permitted to use the girls' restroom, D.H. had to use one of four single-use restroom facilities at the Elementary School, which were: (1) the therapy room restroom; (2) the family restroom in the lobby of the school; (3) a restroom near the school gym; and (4) the restroom in the nurse's office. D.H. was the only student in her class who was not permitted to use the multi-occupancy restrooms, and instead, had to use a single-occupancy facility.

36. Because D.H. is only in elementary school, she is not required to change before attending any physical education classes and thus does not need to access multi-occupancy changing facilities while at school. During second grade, D.H. did not attend any overnight school-sponsored functions where she needed to use multi-occupancy sleeping quarters. We do not anticipate that any such functions will be available during third grade either.

37. D.H. used the single-occupancy, therapy room restroom most often in second grade because it was closest to her classroom. The therapy room restroom is used by students who have certain disabilities or by students who are experiencing emotional distress. D.H. expressed to E.H. and me that she does not like using this restroom because the toilet and floor are often covered in urine that she must clean before using. This restroom is also not always accessible to D.H., and



even when it is, D.H. has been forced to out herself as transgender to the janitorial staff to prove she was allowed to be there (because she must explain to them why she was there).

38. The single-occupancy, family restroom in the lobby of the school is unlike the other restrooms that are only accessible to students and teachers behind a secure wing of the school. The family restroom is open to the public, and D.H. must remember to lock the door when she uses this restroom. In today's climate where shootings at public schools are increasingly frequent, my husband and I are very concerned about D.H.'s safety when she uses this restroom that is so close to the school entrance and open to the public.

39. The single-occupancy restroom near the gym is on the opposite side of D.H.'s school, and was far from her second-grade classroom, causing D.H. to miss more class time in order for her to access it.

40. The single-occupancy restroom in the nurse's office presented COVID-19 and other health concerns as the restroom was often not hygienic and used by kids who were actively ill and seeing the nurse for treatment. Furthermore, using the nurse's restroom inevitably outed D.H. as transgender to other students waiting to be treated in the nurse's office, because the other students were able to observe D.H. enter and exit the single-occupancy restroom without being attended to by the nurse.

41. These restroom "accommodations" provided by the Elementary School were not accommodations at all because D.H.'s use of these restrooms isolated and distinguished her from the rest of her classmates, further exacerbating the stress and anxiety D.H. experienced while trying to avoid being stigmatized for being a girl who is transgender.

42. E.H. and I insisted that the teachers not stop as a class to use the restroom. Often, teachers at the Elementary School would stop as a class on the way to lunch and all the students

would use the restroom at once. D.H.'s 504 Plan expressly lists one of her accommodations as not stopping as a group, yet D.H.'s teachers continued to do so for over nine weeks of the semester. During these times, D.H.'s teachers would send D.H., alone, down the hall in the opposite direction towards one of the single-occupancy restrooms.

43. When D.H. once tried to use the girls' restroom at school, her classmates waiting in the hallway started yelling "D.H. is in the girls' room!" This makes D.H. feel like she is forced to choose between outing herself and being confronted by classmates, or refraining from using the restroom at all.

44. As a result of the differential treatment D.H. received with respect to the restroom facilities, our daughter has been subjected to several instances of bullying and harassment—some of which were reported to the Elementary School's bullying hotline. On D.H.'s first day back to the Elementary School, she was confronted by a group of boys on the playground who argued that she was a boy in a girl's dress. During this encounter, D.H. walked away, not wanting the situation to continue. To make matters worse, one of D.H.'s teachers saw the encounter and confronted the boys. She told them D.H. "*prefers* to be called a girl." Thus, not only was D.H. bullied and harassed by her peers, but her teacher outed her, affirming the boys' belief that D.H. was merely masquerading as someone she is not.

45. In another incident, a different student in D.H.'s school who D.H. did not know, walked around the playground telling other kids that they did not have to call D.H. a girl because she was a boy. Yet another student – someone D.H. did know – similarly told students in her class that they didn't have to refer to D.H. as a girl because she was a boy. D.H. has also been punched repeatedly on the head at the bus stop while waiting to go to school by a student who later stood up on their bus and shouted "this kid is gay!" over and over again.

46. In addition to the bullying and harassment that was done because of D.H.'s gender identity, D.H. has been outed repeatedly by her classmates and teachers who frequently misgender her. After attending the Elementary School's Daddy-Daughter Valentine's Day Dance, a student approached my daughter and asked her loudly if she was "*really* a girl?" When D.H. responded yes, another student interjected and said, "Well, D.H. is born a boy but wants to be a girl." This deeply upset D.H. because she is a girl. The incident also occurred at the lunch table, which D.H. was not allowed to leave, so she could not distance herself from the situation.

47. D.H. has asked for help from her teachers in affirming her gender identity with her classmates. However, D.H. was told that everyone is "allowed to have an opinion" by one of her teachers. When I spoke with D.H.'s teacher and reminded her that D.H. was not upset about opinions, but rather upset about having to prove her gender, D.H.'s teacher said that she did not view the situation in the same way.

48. Our family has worked tirelessly to support D.H. and affirm her gender identity, but the discrimination and harassment that D.H. is experiencing as a transgender girl, including under the School Facilities Law, is persistent and weighs heavily on D.H.

49. E.H. and I are concerned about the emotional distress our daughter is experiencing at the Elementary School and the negative effects it is having on her adjustment disorder.

**E. We are Very Concerned About the Impact the Discriminatory School Facilities Law is Having on Our Daughter, D.H.**

50. Due to the lack of gender-affirming restroom options provided by the Elementary School during the second half of D.H.'s second grade school year, D.H. began limiting her food and water intake to minimize the need to go to the restroom during the day. For a period of time, D.H. even stopped using the restroom at school altogether, meaning that she would not use the

restroom between 8 A.M., when the bus picked her up for school, and 4 P.M., when the bus returned her home. No child should have to go through this experience.

51. When E.H. and I found out that D.H. was not using the restroom for over eight hours a day, we became very concerned about her physical health and were worried that D.H. felt that it was necessary to suppress her natural needs to use the restroom in order to feel comfortable at school.

52. E.H. and I expressed our concerns about D.H. not using the restroom throughout her entire school day with her principal and classroom teacher. Towards the end of the second-grade school year, they reported that D.H. used the restroom about three times a week, but was still not using the restroom every day.

53. Since returning to the Elementary School under the School Facilities Law, D.H.'s behavior noticeably changed.

54. Usually, D.H. is full of energy and excitable. However, she began having "bad days" 1–3 times a week. During these times, she would have explosive screaming fits, often yelling and throwing objects. Once she engaged in negative self-talk—about feeling rejected—and began hitting herself. These episodes were usually brought on by any perceived or real rejection, which triggered her for extended periods of time.

55. Other times, D.H. would become apathetic and lethargic. For example, this occurred around Easter weekend this year and only improved two days before the end of the school year.

56. D.H. also experienced migraines and recurring nightmares of a scary doll in the parking lot of the Elementary School telling her to "always be afraid."

57. D.H.'s regurgitation also reappeared, and she is now showing signs of internalized transphobic thoughts. These thoughts are a direct result of other children fixating on her restroom use and inability to use the girls' restroom.

58. It is incredibly painful for our family to watch D.H. depart from her exuberant personality. Notably, all of the physical symptoms from which D.H. was suffering while attending the Elementary School for second grade – the migraines, regurgitation, nightmares, and extreme highs and lows in her mood – have abated during the summer vacation. However, my husband and I are very worried that they will quickly re-appear once school starts again, and D.H. has to go back to using only single-occupancy restrooms at the Elementary School.

59. D.H. is currently seeing a psychologist and a licensed clinical social worker ("LCSW"). D.H. meets with her psychologist one to two times per month. Her psychologist has linked all of D.H.'s physical symptoms and emotional suffering to the discriminatory treatment and harassment to which D.H. is subjected by virtue of being transgender. She was initially receiving treatment from the LCSW biweekly, but now attends meetings with her weekly (driven largely by the high costs, which are not fully covered by insurance). D.H. finds it hard to open up and share how she's feeling. She has told me she is not ready to share about her experiences but is learning how to determine if someone will be an ally and how to answer her peers when they ask her questions regarding her gender.

60. D.H. also finds it difficult to discuss her body or her use of the restroom and she dislikes others talking about the same issues. She has told me that sometimes she wishes she did not have private parts at all so that others would stop fixating on whether they were right or wrong for her.

61. The School Facilities Law under which D.H. must live at the Elementary School dehumanizes her and has been a huge detriment to her mental, emotional, and physical health.

62. I am afraid that D.H. is at risk of experiencing major depression and even suicidal thoughts because of the discrimination she faces at school by not being able to use the girls' restroom in accordance with her gender identity as well as the bullying and harassment that the Elementary School has failed to address and redress.

63. My greatest fear is that D.H. will develop gender dysphoria—not because her brain tells her that her body is wrong, but because the School Facilities Law and her school environment tell her that she does not meet the legal expectation of what it means to be a girl in school. The School Facilities Law tells her that she is not “girl” enough to use the girls' restroom.

64. The internalized transphobia and threat of gender dysphoria that weighs on D.H. is preventable with acceptance and humanization. However, the School Facilities Law creates an environment where D.H. must be discriminated against and ostracized for her gender identity. This reality has torn our family apart emotionally and has even adversely affected our non-transgender son's relationships with his friends and his own sister.

65. The distress that D.H. and the rest of my family is experiencing could be alleviated if only the School Facilities Law did not deny my daughter access to the girls' restroom at school—access that every non-transgender girl enjoys.

**F. Registration for Third Grade at the Elementary School**

66. Based on the concerns discussed above, my husband and I initially enrolled D.H. at a different elementary school in Williamson County for the third grade. This school does not have multi-occupancy restrooms at all. My understanding is that this school had a transgender student some years ago, before the enactment of the School Facilities Law, and the school

converted their gendered restrooms to non-gendered restrooms to affirm that student's gender identity.

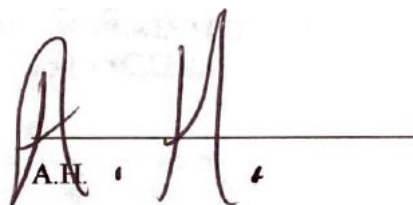
67. This other school is not the school for which D.H. is zoned. If she attended this school, E.H. and I would have to drive her to and from school every day as there is no school bus available. This would cause us great hardship, as we would have to take time off from work, or potentially not work at all on those days due to the school's distance from our home.

68. Additionally, D.H. told E.H. and me that her strong preference was to return to the Elementary School for the third grade. This desire stems partly from the fact that D.H. fears having to come out all over again in a new school, and because she learned through her experience in second grade at the Elementary School who her real friends are, and thus who is "safe."

69. Throughout June and July 2022, our family met numerous times with a new LCSW. Given D.H.'s progress with therapy, we have become more comfortable with her attending the Elementary School and using some of the coping mechanisms she has learned to handle the stress of returning to the School during the pendency of this lawsuit. Accordingly, E.H. and I re-enrolled D.H. at the Elementary School on July 12, 2022. D.H. will start third grade on August 5, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 2022.

A handwritten signature in dark ink, appearing to be "E.H. and I.", written over a horizontal line.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of August 2022, I notified the below service list of this Motion and will be serving the same via electronic mail contemporaneously with this filing.

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